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To: Examiner Robert Stevens Art Unit 2176 U.S. Patent and Trademark Office	Facsimile No. 571-273-8300 Telephone No. 571-272-4102
From: Rebecca Clayton Admin. Assistant to Stephen J. Walder, Jr.	No. of Pages Including Cover Sheet: 15
Please Acknowledge Receipt of the Following Documents Filed Herewith: (1) Transmittal Document; and (2) Appellants' Reply Brief (37 C.F.R. 41.41).	
Serial No. 09/838,425; Attorney Docket No. FR920000031US1	
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE


In re application of: **Bauchot et al.**Serial No.: **09/838,425**Filed: **April 19, 2001**For: **Method and System in an
Electronic Spreadsheet for Comparing
Series of Cells**Group Art Unit: **2176**Examiner: **Stevens, Robert**Attorney Docket No.: **FR920000031US1****50170**

PATENT TRADEMARK OFFICE

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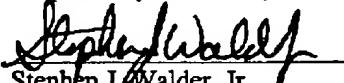
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ENCLOSED HEREWITH:

- Appellants' Reply Brief (37 C.F.R. 41.41).

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Respectfully submitted,



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OCT 13 2005

Docket No. FR920000031US1

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of: **Bauchot et al.** § Group Art Unit: 2176
Serial No. **09/838,425** §
Filed: **April 19, 2001** § Examiner: **Stevens, Robert**
For: **Method and System in an** §
Electronic Spreadsheet for Comparing §
Series of Cells §

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ATTENTION: Board of Patent Appeals and Interferences

APPELLANTS' REPLY BRIEF (37 C.F.R. 41.41)

This reply brief is in response to the Examiner's Answer mailed August 17, 2005.

The fees required under § 1.17(c), and any required petition for extension of time for filing this
brief and fees therefore, are dealt with in the accompanying TRANSMITTAL OF REPLY BRIEF.

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I. Related Appeals and Interferences

The Examiner's Answer alleges that Appellants' Brief does not contain a statement identifying the related appeals and interferences. Appellants respectfully submit that page 2 of Appellants' Brief clearly states that an Appeal Brief was filed in related and co-pending U.S. Patent Application Serial No. 09/838,420 on May 17, 2005. Thus, despite the Examiner's allegations to the contrary, Appellants' Brief does contain a statement identifying related appeals.

II. Summary of the Claimed Subject Matter

Appellants respectfully submit that the summary of the claimed subject matter set forth in Appellants' Brief meets all requirements for Appellants' Brief and the Examiner's "characterization" provided in the Examiner's Answer is not limiting on Appellants' claimed invention. While the Examiner may choose to "characterize" the subject matter in his own way, the claims are only limited by the features recited within the claims and must be examined based on these recited features, not the Examiner's own subjective "characterizations" of the claimed subject matter.

III. Response to Examiner's Remarks Regarding Rejection of Claims 1-7 Under 35 § U.S.C. 112, First Paragraph

In response to Appellants' arguments that specification provides an enabling disclosure for the claimed subject matter, the Examiner again alleges that Figure 5 of the present specification is not enabling and always generates the same result. In alleged support of this, the Examiner offers his own "walkthrough" of Figure 5 on pages 16-17 of the Examiner's Answer. The Examiner's own "walkthrough" illustrates his fundamental misunderstanding of how the present invention operates. This misunderstanding is not because of any insufficiency in Appellants' specification but is completely based on the Examiner's unwillingness to consider that two series of cells may have different relationships and the particular relationship between two series of cells influences the outcome of step 506 in Figure 5 of the present specification.

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The Examiner states that step 507 in Figure 5 is always executed after step 506 and that steps 508 and 509 are never executed. Appellants respectfully disagree. In addition, the Examiner questions how a variable may have an undetermined value when its value was explicitly set in the previous step (again illustrating the Examiner's basic misunderstanding of the invention).

As was clearly described in Appellants' Brief, whether or not step 507, 508 or 509 will be executed after step 506 depends upon the relationship between the two series of cells. Two operations are performed in step 505: the temporary value for cells in series A are set to true and the temporary value for cells in series B are set to false. If a cell exists in both series, its temporary value is set first to true by the first operation, and then to false by the second operation. The cell still exists in both series A and series B, but its temporary value is false even though all of the cells in series A have their temporary values first set to true. By way of example, if there are three cells 1, 2 and 3 in series A, and cell 2 is also in series B, cells 1, 2 and 3 have their temporary values first set to true. Then, in the second operation of step 505, the temporary value for cell 2 (which previously was set to true) is set to false. The result is that the temporary values for the cells are cell 1 is true, cell 2 is false, and cell 3 is true.

As set forth on page 24 of the present specification, in step 506 a determination is made based on the value of the temporary values for series A. This determination results in a "true" value if all of the temporary values for series A are true (this would occur when none of the cells in series A are in series B), a "false" value if all of the temporary values for series A were false (this would occur when all the cells in series A are also in series B), and a "undetermined" value if some of the temporary values of the cells in series A are true and others are false (this occurs when some cells in series A are also in series B but other cells in series A are not in series B, as in the example above). Thus, depending upon the relationship between the series in question, one of the three steps 507, 508 or 509 is followed.

The Examiner's question regarding a variable being "undetermined" immediately after it having been set to a value is illustrative of the Examiner's basic misunderstanding of the present invention. The "undetermined" result is not a statement that a particular value has an "undetermined" value but that the state of the temporary variable for the series is undetermined. A simple reading of the specification on page 24 easily explains what is meant by the "undetermined" branch in Figure 5.

The Examiner further alleges that step 510 does not make sense since the temporary value for series A was already set to true in step 505 and its value allegedly has not changed. Again, the Examiner illustrates a basic misunderstanding of the invention. As shown above, a cell in series A may in fact have its temporary value changed from "true" to "false" depending on whether that cell is also in series B. Thus, the Examiner's allegation that the temporary value for a cell in series A has not changed is not correct for all relationships of series A and series B. It may well be the case that none of the temporary values for cells in series A have changed. However, it is also possible that one or more temporary values for cells in series A have changed, as illustrated above. The operation in step 510 does not distinguish between either of these possibilities and simply sets all of the temporary values for cells in series A back to a "true" value in preparation for the following steps.

The Examiner again alleges, with regard to step 511 in Figure 5, that the same result is obtained in all cases, i.e. that step 514 is always executed next and that steps 512 and 513 are never executed. This allegation is made based on the same misunderstanding addressed above with regard to step 506. If series B has cells that are in series A and other cells that are not in series A, step 510 will set the temporary value of some of the cells in series B, i.e. those cells that are also in series A, to a "true" value. Other cells in series B will have their temporary value remain "false" (as set in step 505).

As set forth on page 25 of the present specification, in step 511 a "true" value is determined if all of the cells in series B have their temporary values set to "true." A "false" value is determined if all of the cells in series B have their temporary values set to "false." An "undetermined" value is determined if some of the cells in series B have their temporary values set to "true" and others are set to "false." Again, the "undetermined" result is not a determination that a particular temporary value for a particular cell is "undetermined" but that the state of the temporary value for the series B is undetermined.

The steps 507-509 and 512-514 are used to set a state of Atrue, Afalse, Btrue, and Bfalse values in the data structure shown in Figure 4 of the present specification. Based on the final setting of these values in this data structure, various ones of the steps 516-520 are followed. The Examiner's allegation that step 518 is always executed and steps 516, 517 and 520 are never executed is based on the basic misunderstandings of steps 505, 506, 510 and 511 discussed above. Despite the Examiner's allegations to the contrary, each of steps 516-520 may be followed

depending upon the particular relationship between the two series.

In view of the above, Appellants again assert that the specification is clearly enabling of the features recited in the claims despite the allegations made by the Examiner. It appears that the Examiner is alleging Figure 5 is non-enabling because the Examiner is looking at Figure 5 in a vacuum and is not considering the other portions of the specification which provide additional support and explanation of the steps shown in Figure 5, e.g., the description of Figure 5 provided in the specification. The specification must be considered as a whole when determining if the specification provides enablement for particular features in the claims. A simple reading of the specification clearly illustrates how Figure 5 provides an enabling description. Appellants have clearly shown by example on a number of occasions how the present specification is fully enabling of the features recited in the claim. The Examiner's continued allegations to the contrary are based completely on the Examiner's unwillingness to consider the specification as a whole, unwillingness to consider Appellants' examples that were provided based solely on a reading of the specification, or to change his stance in light of clear evidence that the Examiner's position is without merit.

For all the reasons noted above and in Appellants' Brief, Appellants respectfully submit that the Examiner's rejection of claims 1-7 under 35 U.S.C. § 112, first paragraph should be overturned.

IV. Response to Examiner's Remarks Regarding Rejection of Claim 7 Under 35 U.S.C. § 112, Second Paragraph

In response to Appellants' argument that the claim language must be interpreted in view of the level of one of ordinary skill in the art and that one of ordinary skill in the art knows and understands what types of media fall within the scope of the term "computer usable medium" or "computer readable medium," the Examiner's Answer alleges that the as-filed specification does not contain the term "computer readable medium", that the term may be read as encompassing a piece of paper, and that it would be unfair to the public to allow one to "purposefully" not define in the specification and then subsequently expand the scope of the term at a later date.

First, Appellants object to the Examiner's characterization of Appellants "purposefully" not defining a term in the specification. From such an allegation, the Examiner appears to be making an unsubstantiated accusation that Appellants are attempting to defraud the public by "purposefully" hiding something. Appellants respectfully submit that no such action has been

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taken on the part of Appellants and Appellants have no motivation to defraud the public. The Examiner should be cautioned not to make such allegations in the future, especially when the Examiner has no basis for making such allegations.

Second, the as-filed specification does use the term "computer readable medium." Claim 7 was filed with the original application. It is a well established tenet that the originally filed claims are part of the specification and may be relied upon for support of claimed features. Claim 7, as originally filed, recited a "computer readable medium" and thus, the Examiner's allegation that the specification does not contain this term is simply incorrect.

Third, Appellants respectfully point out that the actual claim language is a "computer readable medium comprising instructions..." Thus, the claim does not simply recite a computer readable medium, but one that has instructions for implementing the method. If a piece of paper may contain instructions for implementing the method of claim 1, and the piece of paper is computer readable, then a piece of paper may well be within the scope of claim 7. However, this is a question of scope, not definiteness. If the Examiner can find a reference that teaches a piece of paper having instructions written on it that performs the method of claim 1, and that reference teaches that the piece of paper is read by a computer to thereby execute the method of claim 1, then Appellants would concede that the features of claim 7 are anticipated by that alleged reference. However, claim 7 is not indefinite.

There is no requirement that the specification spell out every possible implementation of the present invention. To the contrary, it is well accepted that the features of the claims are interpreted as covering the embodiments described in the specification and the equivalents thereof. These "equivalents thereof" are not spelled out in the specification, yet the law clearly allows applicants to cover such "equivalents." Similarly, while not every "computer readable medium" is spelled out in the present specification, the term "computer readable medium" may be read as encompassing the embodiments described in the specification and the equivalents thereof. In order to determine what the "equivalents" are, one must look at the manner by which the term "computer readable medium" is used by those of ordinary skill in the art. As argued in Appellants' Brief, those of ordinary skill in the art are well aware of the scope of the term "computer readable medium" and thus are well aware of the "equivalents" of the example computer readable media described in the present specification, e.g., main memory 102, mass storage 107 in Figure 1 of the present specification, etc.

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Moreover, there is no question of whether claim 7 recites statutory subject matter under 35 U.S.C. § 101. As discussed at length in Appellants' Brief, and addressed hereafter as well, there is no basis for rejecting claim 7 as being directed to non-statutory subject matter. Thus, despite the Examiner's allegations to the contrary, claim 7 is not indefinite and the rejection of claim 7 under 35 U.S.C. § 112, second paragraph should be overturned.

V. Response to Examiner's Remarks Regarding Rejection of Claims 6-7 Under 35 U.S.C. § 101

With regard to claim 6, in response to Appellants' argument that the claim is directed to a system and is not merely software, the Examiner alleges that because the claims recite "means for" they do not recite any structure to support Appellants' argument that the claims recite a system other than an alleged "software system." Means plus function language is accepted claim language and is covered by 35 U.S.C. § 112, sixth paragraph. The means are to encompass those means set forth in the specification and equivalents thereof. Appellants have shown that Figure 1A of the present application provides one example of a system having means for performing the operations set forth in claim 6. While these means may include the use of software, they are not software only. Since claim 6 is directed to a system, the specification clearly shows a system, and the specification shows that the system has means that are not just software, the system recited in claim 6 is within the technological arts and thus, is directed to statutory subject matter.

Regarding claim 7, in response to Appellants' arguments, the Examiner alleges: (1) that the portion of the MPEP cited requires a "recording" and carrier waves and transitory phenomena do not record the functional descriptive material; (2) that reciting functional descriptive material on a computer readable medium does not guarantee that the claim will be statutory; and (3) it is a matter of policy that computer readable media claims must be limited to "tangible embodiments" in order to be statutory.

With regard to the Examiner's first allegation, while the portion of the MPEP cited by Appellants does state that the functional descriptive material be "recorded" on some computer readable medium, there is no requirement in the cited portion for any period of time that this functional descriptive material to be present on the computer readable medium. Thus, the Examiners apparent concern about the "transitory" nature of carrier waves is irrelevant.

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Moreover, with carrier waves, the data and instructions that are "carried" by the carrier waves are recorded on the carrier waves. As is well known to those of ordinary skill in the art, a carrier wave is modulated to represent the information to be transmitted. A modulating signal (i.e. the signal containing the data/instructions) is used to modulate the carrier wave which transmits the data/instructions to a recipient device. While this recording of data/instructions on a carrier wave through modulation may be "transitory" in that the carrier wave is consumed at the recipient device, the data/instructions are still recorded on the media, despite the allegations made by the Examiner.

The Examiner seems to believe that 35 U.S.C. § 101 requires a media such as a floppy disk, hard drive, memory device, and the like, because the data/instructions are "permanently," rather than "transitorily" recorded on the media. First, there is no requirement in the case law or the MPEP for any "permanency" of the data on the media. Second, even on a floppy disk, hard drive, memory device, etc., the data is only "permanent" until it is overwritten or erased. Thus, even in the allegedly acceptable media, i.e. floppy disks, hard drives, memory devices, etc., the data/instructions are only temporarily present. While the time that the data/instructions are present on the hard drive or floppy drive may be relatively longer than with a carrier wave, both are only temporarily present. Thus, the Examiner's seeming reliance on the amount of time that the data/instructions are present on the media is clearly erroneous since the MPEP and case law do not require any particular amount of time that the data/instructions are on a media and the alleged differentiation made by the Examiner between carrier waves and alleged "tangible" media is technically incorrect.

With regard to the Examiner's second allegation that reciting functional descriptive material on a computer readable medium does not guarantee that the claim will be statutory, Appellants respectfully submit that the only exception set forth in the MPEP in which functional descriptive material on a computer readable medium is considered directed to non-statutory subject matter is when the functional descriptive material is directed to a pure mathematical algorithm, i.e. there is no useful, concrete, and tangible result. Thus, Appellants agree that merely reciting functional descriptive material on a computer readable medium does not guarantee that the claim is statutory. However, Appellants submit that the Examiner must show that the claimed invention is directed to a pure mathematical algorithm embodied on a computer readable medium in order to hold the claim as directed to non-statutory subject matter. This is

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not the case with claim 7 of the present application. As set forth in Appellants' Brief, claim 7 is directed to a computer readable medium comprising instructions adapted to perform the method of claim 1, which provides a useful, concrete and tangible result. Thus, claim 7 is directed to statutory subject matter.

Regarding the Examiner's third allegation that it is a matter of policy that computer readable media claims must be limited to "tangible embodiments" in order to be statutory, Appellants have not received any official notice of such a "policy" having been adopted by the U.S. Patent and Trademark Office. Furthermore, the U.S. Patent and Trademark Office may not adopt a policy that is contrary to the established prevailing case law. As set forth in the MPEP and cited in Appellants' Brief, the case law clearly states that as long as the functional descriptive material is recorded in some computer readable medium, the claim will be considered directed to statutory subject matter as long as the functional descriptive material is not a pure mathematical algorithm. The MPEP and case law do not draw any distinctions between allegedly "tangible" and "intangible" media, i.e. the MPEP and case law do not say so long as the functional descriptive material is recorded in some "tangible" computer readable medium or that "intangible" media are non-statutory. This requirement for "tangible" media is a completely new requirement devised by the Examiner and, from the Examiner's statement that this requirement is "policy," apparently the U.S. Patent and Trademark Office (even though no official notice of such a policy exists) in contrast to the accepted prevailing case law.

Moreover, the Examiner is incorrect in the allegation that carrier waves and transmission media are "intangible." The term "tangible" is not limited to elements that may be perceived only by the sense of touch. To the contrary, the term "tangible" refers to anything that is capable of being perceived, precisely identified or realized by the mind, or capable of being appraised at an actual or approximate value (see Merriam-Webster Online Dictionary Definition, copy attached in Evidence Appendix hereafter). In other words, something is "tangible" if it is possible to verify its existence. This does not require that the element be "touchable" but merely "perceivable."

Carrier waves and signal or transmission media are clearly perceivable, able to be precisely identified or realized by the mind, and are capable of being appraised. Computer readable media, or computer usable media, must be inherently "perceivable," otherwise they would not be "computer readable" or "computer usable." In other words, carrier waves and

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signal or transmission media are measurable, readable, or usable by appropriate devices for measuring, reading or using such waves and media. Thus, they are “tangible” despite the allegations made by the Examiner. Since these types of media are “tangible,” even if there were some requirement in the MPEP, or new policy adopted by the U.S. Patent and Trademark Office, that the media be “tangible,” the present claims would still meet this new requirement and thus, be directed to statutory subject matter.

Thus, for the reasons set forth above and in Appellants’ Brief, Appellants respectfully submit that claim 7 is directed to statutory subject matter. Accordingly Appellants reiterate Appellants’ request that the Board of Patent Appeals and Interferences overturn the rejection of claim 7 under 35 U.S.C. § 101.

VI. Response to Examiner’s Remarks Regarding Rejection of Claims 1-7 Under 35 U.S.C. § 103(a)

In response to Appellants’ arguments with regard to the deficiencies of the cited art in reference to the features of independent claim 1, the Examiner alleges the recited limitations are “merely a laundry list of operations that are exceedingly well known in the art.” Such a statement is illustrative of the Examiner’s inability to “see the forest for the trees.” While individual operations, when taken out of context and examined without any concern for the relationship of those operations with other operations recited in the claim, may be well known, the claimed features as a whole are not well known in the art. In other words, setting a Boolean variable may be well known in the art, but doing so in the particular manner set forth in the claim is not well known in the art. Every computer implemented mechanism may be reduced to a set of well known operations if one were not concerned with how these well known operations were combined to achieve a higher purpose. Every computer program, for example, can be “characterized” as the setting of variables to particular values and using these values to set other variables to other values. But this does not mean that every computer program is anticipated or even obviated by the fact that setting variables to values is well known. Appellants are not just claiming setting Boolean variables in general. Appellants are claiming a particular arrangement of operations which, prior to Appellants’ invention, were not known or obvious to those of ordinary skill in the art.

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It is clear from the Examiner's statements regarding generalities such as "Boolean variables" and "evaluating for conditions" that this piecemeal analysis is the sort of analysis the Examiner is engaged in. Rather than finding the actual features recited in the claim, the Examiner finds generalizations such as IF-THEN-OTHERWISE functions that allegedly implement Boolean functions. If the particular combination of operations recited in claim 1 are so old and well known, why hasn't the Examiner found a reference that anticipates every feature of the claim or even a combination of references that specifically teach portions of the claim which when combined achieve the method recited in claim 1? Rather than finding the actual features of the present invention, the Examiner must make numerous logical leaps from general teachings in the Kelly and Deitel references in an attempt to make the Kelly and Deitel references appear to teach the features of claim 1, when in fact Kelly and Deitel do not teach or suggest any of the features of claim 1.

In addition, the Examiner alleges that Appellants argue the references as if an obviousness rejection requires anticipation of the features of the claim by the references. In Appellants' Brief, Appellants argued each reference with regard to the features the Examiner alleges are taught or suggested by those references. In addition, Appellants argued that since the references did not in fact teach or suggest those features, any alleged combination of the references would not result in the invention of claim 1 being taught or suggested. Appellants have addressed the combination of references alleged by the Examiner. While the references may not have to exactly mimic the claims, they must at least teach or suggest the features recited in the claim, all the features recited in the claim, not just generalizations of the features which the Examiner chooses to examine.

With regard to the Examiner's statement that the Examiner need not "build Appellants' purported subject matter," the Examiner is clearly incorrect. The Examiner must illustrate that one of ordinary skill in the art would be able to, and would be motivated to, build Appellants' purported subject matter from the teachings and suggestions in the references. If the Examiner need not "build Appellants' purported subject matter" then what is the purpose of examination? If building the claimed subject matter is not necessary, the Examiner could find only one element of the claim and reject the entire claim (as in the present case where the Examiner seems to have only found a Boolean function). This allegation, as with the Examiner's entire rejection, is predicated on the fact that the Examiner does not consider the combination of features in the

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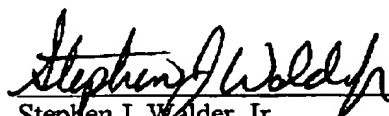
claim but merely chooses to perform piecemeal examination of generalizations of the claimed features. Thus, yet again, the Examiner is in error.

All of the Examiner's other responses to Appellants arguments are based on the same fundamental problems as addressed above. The Examiner does not consider the claims as a whole and does not examine the actual features in the claims but instead chooses to examine generalizations. Thus, the Examiner's responses to these other arguments are just as flawed as those addressed above. Appellants respectfully submit that all of the claims 1-7 define allowable subject matter over the alleged combination of Kelly and Deitel for the reasons set forth herein and in Appellants' Brief. Therefore, the rejection of claims 1-7 under 35 U.S.C. § 103(a) should be overturned.

VII. Conclusion

In view of the above, Appellants respectfully submit that claims 1-7 of the present application are enabled by the present specification, are not indefinite, are directed to statutory subject matter, and that the features of these claims are not taught or suggested by the cited references. Accordingly, Appellants request that the Board of Patent Appeals and Interferences overturn the rejections set forth in the Final Office Action.

Respectfully submitted,


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Below is a copy of the Merriam-Webster's On-line Dictionary definition of the term "tangible":

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